

Final

**Supplemental Environmental Impact
Statement**

of the

**Proposed
Shoreline Management Program**



August, 2010

Distribution List

Federal Agencies

U.S. Natural Resource Conservation
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service

U.S. Army Corps of Engineers
National Marine Fisheries
U.S. Department of Agriculture, Forest Service

State Agencies

The Office of the Governor
Department of Ecology
Department of Natural Resources
Department of Commerce
Department of Agriculture
Department of Social and Health Services
Utilities & Transportation Commission
Department of Corrections

Department of Fish & Wildlife
Department of Health
Department of Transportation
WA State Energy Office
Office of Archaeology and Historical Preservation
Parks and Recreation Commission
Department of Transportation, Northwest Region
Interagency Committee on Outdoor Recreation

Regional Agencies and Interest Groups

Puget Sound Partnership
Puget Sound Clean Air Agency

Puget Sound Regional Council
Regional Transit Authority

Snohomish County Agencies and Interest Groups

Snohomish County Department of Public Works
Snohomish County Sheriff
Snohomish County Surface Water Management Division
1000 Friends of Snohomish County
Action Council for Esperance
Agriculture Tomorrow
Arlington Heights Comm.
Canyon Firs Homeowners Assn.
Cavalero Residents for Responsible Growth
Community Transit
Crestline Estates Action
Economic Development Council of Snohomish County
Edmonds Chamber of Commerce
Everett Chamber of Commerce
Everett Transit
Friends of Florence Acres
Futurewise
Housing Authority of Snohomish County
Jordan Road Citizens
Kayak Pt. Citizens Group
League of Women Voters
Little Bear Cr. Protective Assn.
Martha Lake Community Club
Martha Lake Homeowners

Snohomish County Parks and Recreation Department
Snohomish County Solid Waste Division
Snohomish Health District
Master Builders Assoc. of King and Sno Co
McKee's Evergreen Beach
Newberg Organization
North Creek Rural Areas
North Marysville Citizens
Picnic Point Community
Pilchuck Audubon Society
Possession Bay Association
Professional Consultants
Silver Lake Action Comm.
Smartgrowth Campaign
Snohomish Arlington Trail Coalition
Snohomish County Conservation District
Snohomish County/Camano Island Board of Realtors
Snohomish Wetlands Alliance
So. Sno. Co. Chamber of Commerce
Sound Transit
Stillaguamish Citizens Alliance
Swamp Creek Locust Way
Tom Ehrlichman
Toyer Consulting & Advocacy, LLC
Wandering Creek Homes

Neighboring Planning Departments

Island County Planning Dept.
Skagit County Planning Dept.

Dept. of Dev. & Environ. Services (King Co.)
Chelan County Planning Dept.

Tribes

Muckleshoot Tribes
Sauk/Suiattle Tribe

Tulalip Tribes
Stillaguamish Tribe

Utilities

Alderwood Water District
Lake Stevens Sewer District
Olympic View Water and Sewer District
Silver Lake Water and Sewer
Snohomish County PUD No. 1
Highland Water Assn.
Seven Lakes Water Assn.
Sky Meadow Water Assn., Inc.
Puget Sound Energy

Cross Valley Water District
METRO
Mukilteo Water District
Diking District #2
Cascade Natural Gas
Roosevelt Water Assn.
Three Lakes Water Assn.
King County Wastewater Treatment Division

Cities

City of Arlington
City of Brier
City of Edmonds
City of Gold Bar
Town of Index
City of Lynnwood
City of Mill Creek
City of Mountlake Terrace
City of Snohomish
City of Sultan

City of Bothell
Town of Darrington
City of Everett
City of Granite Falls
City of Lake Stevens
City of Marysville
City of Monroe
City of Mukilteo
City of Stanwood
Town of Woodway

School Districts

Arlington School District
Edmonds School District #15
Granite Falls School District
Lake Stevens School District
Marysville School District
Mukilteo School District
Snohomish School District
Sultan School District

Darrington School District
Everett School District
Index School District
Lakewood School District
Monroe School District
Northshore School District
Stanwood School District

Fire Districts & Ports

Fire District 1 South County
Fire District 4 Snohomish
Fire District 7 Clearview
Fire District 10 Bothell
Fire District 12 Marysville
Fire District 15 Tulalip
Fire District 17 Granite Falls
Fire District 19 Silvana
Fire District 21 Arlington

Fire District 3 Monroe
Fire District 5 Sultan
Fire District 8 Lake Stevens
Fire District 11 Silver Lakes
No. County Regional Fire Authority
Fire District 16 Lake Roesiger
Fire District 28 Index
Fire District 22 Getchell
Fire District 24 Darrington

Fire District 23 Robe
Fire District 25 Oso
Fire District 27 Hat Island
Paine Field Fire District

Newspapers

The Herald
Arlington Times
Snohomish County Tribune
Mukilteo Beacon
Monroe Monitor
Marysville Globe
Bothell-Kenmore Reporter

Libraries

Arlington Library
Brier Public Library
Edmonds Public Library
Granite Falls Library
Lynnwood Public Library
Mill Creek Library
Mountlake Terrace Library
Sno-Isle Regional Library
Stanwood Library

Fire District 26 Gold Bar
Port of Everett
Port of Edmonds

Lake Stevens Journal
Seattle Times-North Bureau
Seattle PI
Mill Creek Enterprise
Woodinville Weekly
Enterprise Newspaper
The Edmonds Beacon

Bothell Library
Darrington Library
Everett Public Library
Lake Stevens Library
Marysville Public Library
Monroe Library
Mukilteo Public Library
Snohomish Public Library
Sultan Library

Fact Sheet

Project Title

Snohomish County Shoreline Management Program Update

Lead Agency Information

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Proposed Action

Snohomish County is revising the Shoreline Management Program (SMP) as required by state law, RCW 90.58. The state Shoreline Management Act (SMA) recognizes that shorelines are among the most valuable and fragile of the state's natural resources, and there is great concern relating to their utilization, protection, restoration, and preservation. To this end, the SMA requires that local governments adopt shoreline management programs to balance the use and development of the shorelines for economic and residential use, public access and recreation, and preservation and restoration. The proposed action for Snohomish County will require adoption of a new SMP, including revisions to Snohomish County Code (SCC), Title 30.

This Final Supplemental Environmental Impact Statement (FSEIS) is a non-project programmatic document authorized under the State Environmental Policy Act (SEPA), WAC 197-11-442. The purpose of the document is to provide readers with a broad understanding of the proposed program sufficient to determine differences between proposed alternatives. This FSEIS evaluates three alternatives:

Alternative 1: Existing Program: Maintains existing County SMP.

Alternative 2: Proposed Program: Modifies County shoreline master program to comply with new state SMP Guidelines.

Alternative 3: Reduced Jurisdiction Program: Modifies County SMP to be in compliance with new state SMP Guidelines with a reduced jurisdictional boundary.

Permits, Certifications, Licenses & Other Required Actions or Approvals

Because this proposal is regulatory and programmatic, the action of adopting the SMP does not require individual licenses or permits.

Date of Issue of FSEIS: August 25, 2010

Anticipated Final Action Date

Approval of the Shoreline Management Program by the Snohomish County Council is anticipated in September, 2010.

Document Availability

Information regarding the availability of this FSEIS will appear in the Everett Herald and will be mailed to all parties on the Shoreline Management Program Update project mailing list. Copies will be available for review at the County Administration Building, 3000 Rockefeller Avenue, Everett, Washington and in public libraries located in Arlington, Stanwood, Lake Stevens, Granite Falls, Snohomish and Monroe. The SEIS and future project updates will be available on the Snohomish County Web site:

http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/Code_Development/Shorelines/SMPUpdate.htm

Copies of the FSEIS are available on CD-ROM from Snohomish County at \$5 plus \$1.50 postage. To obtain a copy of the SEIS on CD-ROM, please contact Lori Lollis at Snohomish County: (425) 388-3311, Ext. 2206. A limited number of paper copies of the SEIS are available for \$15 at Snohomish County Planning and Development Services, 3000 Rockefeller Avenue, Everett, Washington.

Location of Background Material

Background material and supporting documents for this FSEIS are available for review at Snohomish County Planning and Development Services.

EIS Authors & Principal Contributors

The FSEIS has been prepared by Snohomish County Planning and Development Services.

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Introduction

The purpose of this Final Supplemental Environmental Impact Statement (FSEIS) is to respond to comments on the Supplemental Environmental Impact Statement (SEIS) submitted during the public comment period, thereby fulfilling the requirements under WAC 197-11-560.

The SEIS was drafted to analyze the potential environmental impacts of the county's proposed updates to the shoreline management program (SMP). Updates to the county's SMP are required by the Shoreline Management Act (RCW 90.58.080).

The Notice of Availability for the SEIS was published on June 23, 2010, and the public comment period ended on July 23, 2010.

Project History

The county began preparing updates to the SMP in 2004, shortly after the state adopted updates to the shoreline guidelines in WAC 173-26. An initial draft of the SMP was prepared in June, 2006, along with a Draft Environmental Impact Statement (DEIS) and a Final Environmental Impact Statement (FEIS). After review in late 2006 by the state Department of Ecology, the county re-drafted the proposed SMP updates. Updates to WAC 173-18 and 173-20 in February, 2007, also required that the county revise the maps showing rivers and lakes subject shoreline jurisdiction. Because of the post-2006 revisions to the proposed SMP and the updates to the maps expanding the county's shoreline jurisdiction, the county prepared a Supplemental Environmental Impact Statement (SEIS) in June, 2010, to analyze the potential impacts of the revised policies and regulations and to include the newly added jurisdiction.

Project Description

The SEIS analyzed three alternatives: 1) the No Action alternative, 2) the Proposed SMP alternative, and 3) the Reduced Jurisdiction alternative. The No Action alternative would leave the county's current shoreline program, originally adopted in 1974, in place. The Proposed SMP alternative is the preferred alternative. The Reduced Jurisdiction alternative is an option allowed by RCW 90.58.030(2)(f)(i) to reduce local shoreline jurisdiction in the floodplain - instead of including the entire 100-year floodplain, local jurisdictions have the option to include, at a minimum, only the floodway plus the areas landward for 200 feet.

Errata Sheet: Alternative 3 – Reduced Jurisdiction

1. Page 26, bullet points: An additional bullet point should be included to describe how the shoreline jurisdiction is delineated in the lower Snohomish and Stillaguamish floodplains under Alternative 3, as follows:

- In the lower floodplains of the Snohomish and Stillaguamish Rivers, where the floodway has not been calculated, the Density Fringe was used to determine the extent of shoreline jurisdiction.

2. Page 29, Table 2B: The acreages reported for Alternative 3 should be revised as follows:

Table 2B: Comparison of Proposed Alternatives - Acreages				
Alternative 1		Alternatives 2 and 3	Alt. 2	Alt. 3
Environment Designation	Acres	Environment Designation	Acres	Acres
Natural	1,519	Aquatic (non-Puget Sound)	12,484	12,484
Conservancy (non-Puget Sound)	22,711	Aquatic (Puget Sound)	54,300	54,300
Conservancy (Puget Sound)	54,300	Natural	5,203	4,870
Rural	48,676	Resource	49,133	43,452
Suburban	4,377	Rural Conservancy	14,873	11,794
Urban	697	Urban	1,190	1,063
		Urban Conservancy	436	259
		Municipal Watershed Utility	2,252	2,252
Total	132,280	Total	139,872	130,474
Subtotal (not including Puget Sound)	77,973	Subtotal (not including Puget Sound)	85,572	76,174
Subtotal (not including Aquatic - <i>estimate</i>)	66,176	Subtotal (not including Aquatic)	73,088	63,690

3. Page 45, Table 4: For Alternative 3, the river-related jurisdictional areas reported in the first row of the table should also include Density Fringe areas in addition to the floodway and adjacent uplands; total acreage for Alternative 3 should be revised to 130,474.

4. Page 54, last paragraph: The discussion of potential impacts associated with Alternative 3 should be expanded. The following analysis should be added:

Alternative 3 excludes almost 9,400 upland acres from shoreline jurisdiction relative to Alternative 2. These excluded areas are located in the 100-year floodplain but outside of the floodway or density fringe. However, these areas are hydrologically connected to the rivers and are part of an integrated ecosystem. Flood waters from the 100-year event occupy the entire 100-year floodplain, not just the floodway plus 200 feet landward. Implementation of Alternative 3 would mean that different management policies and regulations would apply within different portions of the floodplain ecosystem and result in disjointed management of the floodplain.

- Properties with comparable risk, conditions and characteristics would be subject to different policies and regulations;
- The jurisdictional boundaries under Alternative 3 are not as easily determined or recognizable on the ground or distinguishable from a hydrological perspective;
- Predictability is impaired for the regulation of associated wetlands which may lie within the floodplain but outside of the floodway plus 200 feet. These wetlands are included in shoreline jurisdiction regardless of which option is used to determine local jurisdiction in the floodplain; and
- The ecological functions of the rivers extend throughout their floodplains and are best protected if the full ecological system is included in the management program.

Including only a portion of the floodplain in shoreline jurisdiction may result in inadequate protection for floodplain functions.

SEIS Comments and Responses

The county received five comment letters in response to the Notice of Availability for the SEIS. Comment letters were submitted from:

Gary Reiersgard, County Resident

Washington State Department of Ecology (letter with attachment)

Washington State Department of Ecology (follow-up email)

Master Builders Association of King and Snohomish Counties

Citizens for Sustainable Development (Transmittal email and letter)

The comment letters are included in their entirety in this FSEIS. Numbers have been inserted by the county into the right margins to facilitate tracking of the county's responses. Comment summaries and responses follow each letter.

Comment for PDS staff – Proposed Shoreline Management Program AND

Comment in response to Supplemental Draft EIS – Proposed Shoreline Management Program

G Reiersgard March 9, 2010

Proposed Alternative 3

This alternative would remove all areas within the 100 year floodplain from shoreline jurisdiction, except for lands within 200 feet of a designated floodway.

1

Some explanation has been given on Page 12 of the PDS staff recommendation regarding the mapping of the county's floodplains and floodways. However, more detailed information should be provided in the SDEIS.

I don't believe the significance of the impacts of this alternative have been adequately addressed or stated in the Draft Supplemental EIS. Even though the EIS identifies approximately 20,000 acres of land currently under shoreline jurisdiction within floodplain areas that would be removed from jurisdiction under alternative 3, it fails to explain the specific "floodway" history for the lower Snohomish and lower Stillaguamish Rivers where most of the floodplain lands are located.

2

Alternative 3 seems to relying upon a false premise that has not been explained in the DSEIS: that floodways have not been identified for the lower Snohomish and lower Stillaguamish Rivers. In fact, equal conveyance floodways have not and could not be calculated for these areas. Therefore, technically there is no legitimate floodway to use for an Alternative 3 shoreline mapping in these areas. Most of the other smaller river systems in the county do have equal conveyance floodways that extend landward from the river channel, and are mapped on the county's official flood hazard area maps.

3

Persons familiar with the concepts of floodways and floodway fringe areas realize that the "floodway" is computed to be the land area that will carry all the waters of the base flood (100 year flood). In the lower

Snohomish and Stillaguamish Rivers, this area would comprise almost 1/3 of the respective floodplain areas and would have to be arbitrarily located somewhere in the floodplain. This type of political decision was not made for these areas; but instead a “density fringe” designation was applied that would limit development throughout the entire floodplain by limiting overall development density (blockage of flood flow and area of fill) to prevent more than a 1 foot rise in floodwaters during the base flood. FEMA and the state DOE endorsed this “density fringe” technique in lieu of a floodway designated area. In doing so, only the river channels themselves maintained a “floodway” designation. So you can see that any reliance upon the river channel floodway in these areas for shoreline jurisdiction, as is proposed with Alternative 3, would be entirely improper.

3

In addition to the above floodway issue for the noted river systems, further explanation of the use of Alternative 3 shoreline jurisdiction needs to focus on the practical effects of using a “floodway” designation vs. a “floodplain” designation within the context of good shoreline management. Even though floodway areas are identified in accordance with federal and state mandates with the purpose of keeping an area clear for floodwater flow, the reality of significant flooding does not put water only into a floodway area reserved for it on a map. Flooding in most river systems is based upon the topography of the floodplain. Floodwater flow takes the path of least resistance, irrespective of where the floodway is located on a piece of paper. Only if the entire floodplain outside of a designated floodway were filled would floodwaters use only the floodway for conveyance. This being the case, the entire floodplain is subject to both frequent and infrequent flooding and should remain within the jurisdiction of shoreline management program to preserve the ecological functions identified in Alternative 2.

4

Comment 1: More detail should be provided in the SEIS regarding the floodplain and floodway mapping of the shoreline jurisdiction under Alternative 3.

Response 1: Your comment is acknowledged. See errata sheet for expanded discussion of Alternative 3.

Comment 2: The potential impacts associated with Alternative 3 have not been adequately addressed.

Response 2: Your comment is acknowledged. See errata sheet for expanded discussion of Alternative 3.

Comment 3: Floodway mapping issues in the lower Snohomish and Stillaguamish river valleys have not been accurately described. Equal conveyance floodways could not be mapped for these areas. To avoid arbitrarily designating a floodway somewhere in the floodplain, a “density fringe” designation was applied to the entire floodplain, as shown on the county’s official flood hazard area maps.

Response 3: Alternative 3 includes the density fringe areas within the shoreline jurisdiction. See errata sheet for expanded discussion of Alternative 3.

Comment 4: In addition to the floodway issue, further explanation of the use of Alternative 3 shoreline jurisdiction needs to focus on the practical effects of using a “floodway” designation vs. a “floodplain” designation within the context of good shoreline management.

Response 4: Your comment is acknowledged. See errata sheet for expanded discussion of Alternative 3.

June 16, 2010

Terri Strandberg, Principle Planner
Snohomish County Planning and Development Services
3000 Rockefeller Avenue, M/S #604
Everett, WA 98201

RE: Revised Shoreline Cumulative Impacts Analysis (June 2010)

Dear Ms. Strandberg:

Enclosed are the Department of Ecology comments on the June 2010 revised Shoreline Cumulative Impacts Analysis. Your revisions have addressed the majority of Ecology's previous comments. The additional analysis in a number of sections has significantly improved the report. The restructuring of the ecological functions/impacts and regulatory offset tables have also greatly improved the analysis. Connections between ecological functions, shoreline types and specific proposed regulations are more clearly defined.

My follow-up comments for the major and specific comments are italicized after each comment. I have deleted the specific comments that have been addressed. Shoreline exemptions and lake jurisdiction comments will most likely carry through to Ecology's final review. Ecology is also still assessing section 4.4.2 (Variable Standards for Critical Area Protection). We hope to send you these comments by July 1, 2010.

Overall, Ecology's assessment of the analysis is that it comprehensively documents how the proposed Snohomish County shoreline master program update intends to address further degradation of freshwater and marine shoreline ecological functions (exception of section 4.4.2).

Please give me a call at 425-649-4253 if you would like to discuss any of my comments or if you need clarification on any issue.

Sincerely,

David Pater
Shoreline Planner

Department of Ecology Comments on Snohomish County Cumulative Impacts Analysis

David Pater
February 16, 2010
Revised comments June 16, 2010

The overall analysis is comprehensive, and the document does a good job of presenting all the various shoreline reaches existing land use conditions and foreseeable future development especially future platting and subdividing. This is the strength of the analysis. The methodology is well organized and all the variables and data limitations explained thoroughly. While the analysis does have its limitations; I think for the most part these limitations are well documented where appropriate in the report with one key exception.

Ecological conditions information are presented in chapter two and then carried through to table 14. But there seems to be a disconnect with factoring in the reach level ecological conditions in the impact analysis in chapter 3. Within the methodology there is a disconnect between the shoreline inventory/characterization segments information and the delineated reaches in the cumulative impacts analysis (see sec 2.1 item 1). The CIA analysis doesn't seem to thoughtfully integrate the inventory characterization segment ecological information into the reach analysis beyond the distinction between shoreline environments. Since the majority of the County's shoreline consists of Rural Conservancy and Resource Environments; defining more ecologically sensitive areas within these shorelines and factoring in these ecological conditions into the CIA analysis is a critical missing component.

1

Section 2.2 presents the ecological indicators; but really doesn't explain how this information is integrated into the overall cumulative impacts analysis. Beyond redoing the entire analysis; one solution is to discuss the more high valued ecological segments as a subset discussion within the existing conditions discussion for each shoreline type in section 3 (Impact Analysis). The segment ecological functions information should be matched up with the particular high value shoreline reach within each of the three shoreline type discussions. The individual reach discussions in section 3 mainly focus on future development and existing land use conditions.

The updates to chapter 3 reach level discussions are very good and they address the above comments.

Without considering existing ecological conditions more; this cumulative impact analysis cannot be considered sufficient to meet the "no net loss" requirement of WAC 173-26-201.3.d.iii. The cumulative impacts analysis should be able to demonstrate that areas with a high level of

2

ecological functions (ex. Snohomish and Stillaguamish Estuaries) have shoreline environment designations and or SMP regulations that protect and maintain these functions. Chapter three of the EIS does an excellent job of providing this information for the natural and urban conservancy environments. But the more ecologically sensitive rural conservancy and resource should also be evaluated. This is one of the key out comes for any cumulative impacts.

2

Chapter 3 updates to riverine reaches and providing more specific proposed regulatory references addresses the majority of this comment. Considering the amount of agricultural land in the floodplains of the lower Stillaguamish and Snohomish Rivers; the predominant application of the resource environment designation is understandable. How effective the proposed standards will be at minimizing further ecological degradation in these areas, will only be answered by the County follow-up no net loss monitoring in the years to come.

Specific Comments

Page 13, table 2: Lakes such as Blanca should be left in the program. Even though they are located on Federal land, non federal actions could still occur. Any lakes in the County greater than 20 acres should be included in the master program.

3

All County Lakes and Water bodies that fall under the SMA jurisdictions need to be acknowledged on the proposed shoreline environment maps. It's problematic to just call out these select few, when a number of other lakes that located in the Mount Baker Snoqualmie National Forest are considered by the County to be in jurisdiction. The justification for including these lakes is to address potential non federal actions that may take place on federal lands.

Page 32 Table 7:

New Docks: N/A is given for new docks in the river & stream reaches. Does N/A mean not available, considering that the modeling is based on new primary structures. 30.67.430 - Table 1: Shoreline Use and Modification Matrix permits docks in rivers and stream for most designations. Some type of qualitative discussion on future docks in rivers is needed. I imagine to interference with stream flow will negate many new docks.

4

The additional page 35 discussion is adequate. But I would recommend some stronger regulatory prohibition on piers and docks that interfere with navigation, stream flow and other physical and biological riverine processes.

Page 46: Resource: Acreage and future development outcomes seem inaccurate. Reassessment needed that better reflects outcomes.

Page 47, Rural Conservancy: Can future forecasts be adjusted for actual shoreline acreage to better reflect future development impacts? The difference between parcel size and shoreline acreage is significant.

Page 47: Urban: Are table 12 acreage numbers correct? Call out specific restrictions to commercial uses or cross reference to table 15. Also need to discuss future residential development.

The limitations of the CIA modeling makes it difficult to address the three above comments.

Page 49, Sec 3.3, 3rd bullet: Numerous small impacts will add up. Need to compensate somewhere else to achieve overall no net loss. Tracking of shoreline exempt activities is critical element of monitoring no net loss of ecological functions.

Page 50 sec 3.3.1: County will need to implement tracking of shoreline exempt activities. Other County and cities track exemptions for more significant activities. This is a critical component for tracking no net loss as outlined in WAC 173-26-201.3.d.iii.

Pg. 58: Not addressed. The County needs to track shoreline exemption activities within their permit tracking system. I understand that all activities cannot be tracked, Ecology's expectation of any county or city is that when a property owner applies for a permit for any activity in the shoreline, the local government will first determination whether or not the activity needs to shoreline exemption or permit. The County's proposed system of catching these activities under the purview of a Property owner needing other permits will catch some of the exemptions, but many others may not be tracked. Many cities and counties around Puget Sound issue one page shoreline exemptions and track the exemptions in their permit tracking system. Ecology expects Snohomish County to implement a similar system, otherwise the probability of comprehensively evaluating the proposed SMP standards for achieving no net loss of ecological functions will be difficult.

Page 54: Forestry is not exempt from SMA like agriculture.

Sec. 4.0 Regulatory Offsets: This section provides a good general overview of key proposed shoreline regulations that help minimize further ecological degradation. Some but not all of these items have been incorporated into the cumulative impacts table 14.

Shoreline Regulations have been adequately incorporated into table 15.

Water Movement; incorporate new standards for breakwaters, jetties and groins into marine section.

Table 15: Applicable standards not incorporated.

4.1.1 Critical Areas Regulations: The list of specific critical areas standards should be incorporated into the cumulative impacts analysis table regulatory offset columns within the appropriate sections (Ex. buffer specifics in vegetation & habitat functions). The critical area references within table 14 are too general and these more specific CAO references would add quite a bit to the CIA table.

Table 15: Comment Addressed: Excellent job of incorporating relevant CAO standards.

Tables 14 A-14C Shoreline Function: Under each general function recommend listing sub-functions or processes.

Comprehensively addressed in tables 15 and 14 A. B & C.

Tables 14 A-14C Regulatory Offsets: More regulatory distinction between shoreline types is needed. Ecology understands that their will repeated regulations; but the majority of the offsets for each function are identical between the three tables. The proposed SMP regulations do have standards specific to each shoreline type that should be included where appropriate. Critical areas regulations are considered part of the SMP and should be presented under proposed program. Suggest eliminating “Other Regulatory” category and incorporate State water quality requirements and ESA requirements into the beneficial Effects of any Established Regulatory Programs section at the beginning of the CIA.

Comment addressed. Restructured table 15 does an excellent job of listing specific regulations and connecting them to the applicable shoreline type, environment, and use. This provides a greatly improved explanation on how the proposed SMP regulations will address no net loss for individual ecological functions.

Page 70, bottom: Specific CAO buffer reduction standards need to be documented in this section to show how they meet no net loss standard. This discussion and Figure 17 is useful but on a more general level.

Ecology's SMP review included a list of recommended critical areas exceptions. Within this list a number of CAO provisions were identified as potential SMP variable standards that require a cumulative impact analysis. Section 4.1.1 and table 14 also do not address these CAO standards.

CH. 30.62A Fish and Wildlife Habitat Conservation Areas

**30.62A.320 (1) (e) (i) (ii) & (ii) (Measures for reducing buffer width and area that may be used without a critical areas study or site plan)*

**30.62A.320 (1) (f) (i), (3) (ii) & (iii) (Enhancement reduction)*

**30.62A.320 (1) (g) (Buffer reduction limits)*

**30.62A.510 (Single Family residential development exceptions) (1), (3) & (7)*

CH. 30.62B Geological Hazards Areas

**30.62B.340 (2) b (Deviations from Setbacks)*

Ecology is still assessing section 4.4.2 (variable standards for critical area protection) analysis for meeting no net loss of ecological functions, and whether or not the above CAO elements should remain in the SMP integrated CAO, be listed as exceptions in SCC 30.67.060 (3,) or treated as a variable standard requiring a shoreline variance under SCC 30.67.060 (4).

Page 71, par 1: Provide example of how CAO innovative design and or flexible standards address SMA water dependent and or public access requirements. While these CAO provisions may provide assistance with meeting these SMA goals; they were not developed specifically to address SMA.

Page 101: Comment addressed, good analysis.

Figure18: The CAO adaptive management strategy will be a very effective tool for tracking NNL for CAO regulations. Would also recommend that the CAO adaptive management plan be modified to assess the effectiveness of SMP regulations. This would allow the County to fully meet WAC 173-26- 191 (2) (a) (iii) (D) No net loss tracking requirements.

Pg. 105: SMP regulations adequately included in the additional narrative discussion. Tracking of exemptions still needed, see previous comment.

Page 73, Conclusions: The final analysis needs to be more comprehensive, touching on the all the key aspects of the cumulative impacts analysis. Sub discussions should also be provided for the three shoreline types (lake, river & marine) and explain why the proposed program activities meet no net loss in these shoreline environments.

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Page 105: Comment addressed. Excellent summary, really provides great overview of key SMP standards and the analysis.

Shoreline Use Analysis:

I have reviewed the revised cumulative impacts analysis to see if it fulfills shoreline use analysis requirements as described in WAC 173-26-201 (30 (d) (ii). The CIA and the Ecological Conditions Report does a good job of characterizing existing shoreline uses. The CIA also adequately addresses estimating future demand for shoreline space but does not address potential use conflicts. I also reviewed the Ecological Conditions Report and Inventory information. Neither of these documents addresses potential shoreline use conflicts. We will need to discuss how the County intends to fulfill remaining use analysis requirements.

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Pages 83-85: Comment addressed. Excellent discussion and examples of use conflicts

Comment 1: There seems to be a disconnect with factoring in the reach level ecological conditions in the impact analysis in chapter 3. Within the methodology there is a disconnect between the shoreline inventory/characterization segments information and the delineated reaches in the cumulative impacts analysis. The CIA analysis doesn't seem to thoughtfully integrate the inventory characterization segment ecological information into the reach analysis beyond the distinction between shoreline environments.

Response 1: This comment has been addressed by additions and revisions to Chapter 3. These updates to Chapter 3 were included in the cumulative impact analysis (SEIS, Appendix C) released for public comment on June 21, 2010.

Comment 2: The more ecologically sensitive rural conservancy and resource should also be evaluated to ensure that the shoreline environment designations and SMP regulations will protect and maintain the ecological functions.

Response 2: Chapter 3 updates to riverine reaches and providing more specific proposed regulatory references addresses the majority of this comment. These updates to Chapter 3 were included in the cumulative impact analysis released for public comment on June 21, 2010. Most of the land in the major river valleys that is designated *Resource* is already involved in on-going agricultural activities and not subject to regulation under the Shoreline Management Act (RCW 90.58.065). New agricultural activities will be subject to the policies and regulations in the proposed SMP including the required standard to achieve "no net loss of ecological functions." The county's ecological monitoring and adaptive management program should be able to identify and resolve issues related to the "no net loss" standard.

Comment 3: Lakes 20 acres or larger located within federal land holdings should be included in the county's shoreline jurisdiction.

Response 3: The shoreline lakes 20 acres or larger located on federal lands are shown on the countywide shoreline map. These lakes are only subject to regulation under the Shoreline Management Act if actions are proposed by the state, local government or a private entity.

Comment 4: Some stronger regulatory prohibition on piers and docks that interfere with navigation, stream flow and other physical and biological riverine processes are recommended.

Response 4: Table 15 in the cumulative impact analysis summarizes the specific dock provisions in 30.67.515(1)(k). The proposed code includes the following provision addressing riverine processes:

(k) Docks, piers and floats.

- (i) Docks, piers and floats shall not deflect river currents or wave energy resulting in the undercutting of banks, erosion, or damage to adjacent or downstream properties or critical saltwater habitat;

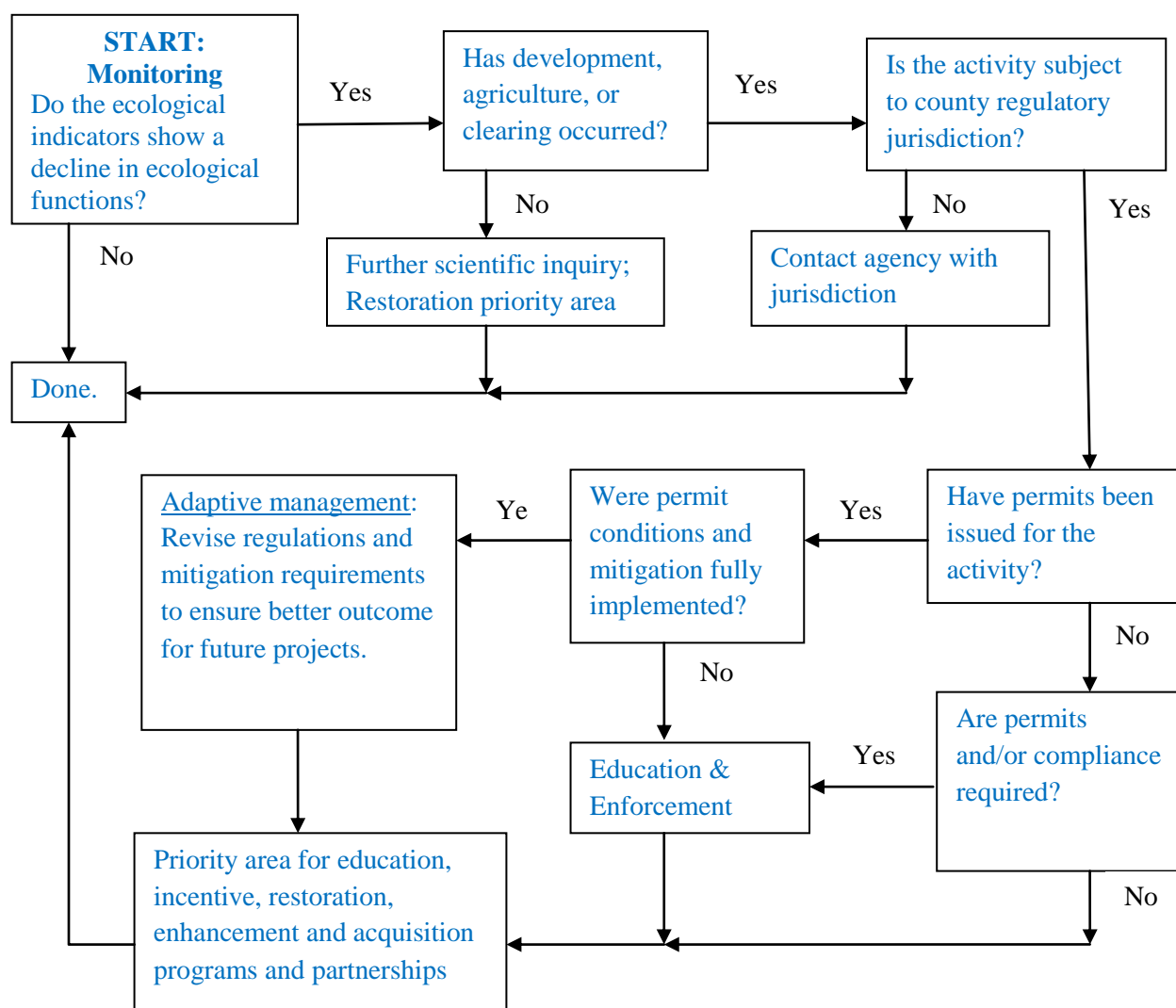
Comment 5: The parcel acreages and the shoreline acreages reported do not match up.

Response 5: Since all development is parcel based and delineation of shoreline jurisdiction is not, it is impossible to determine the extent of development that will occur only on the shoreline portion of the parcels. The CAO offers some help – the required shoreline buffers are 150 feet. That leaves very little shoreline area outside of these buffers where development can occur. Most of the development will therefore be on the non-shoreline portion of the parcels.

Comment 6: Many cities and counties around Puget Sound issue one page shoreline exemptions and track the exemptions in their permit tracking system. Ecology expects Snohomish County to implement a similar system, otherwise the probability of comprehensively evaluating the proposed SMP standards for achieving no net loss of ecological functions will be difficult.

Response 6: The county tracks all permits and whether or not a property for which a permit has been applied contains shoreline jurisdiction. From there permit activity for parcels within/containing shorelines can be determined. The county can also tell whether or not a shoreline permit (SSDP, CUP or variance) was issued. If a non-shoreline permit was issued in shoreline jurisdiction but a shoreline permit was not issued, this is typically due to an exemption from shoreline permit requirements – or it was a mistake. The permit tracking system will already catch it either way.

The county also has a monitoring and adaptive management program to look for areas experiencing a decline in ecological functions. When a decline is observed, additional analysis will be conducted to identify a cause. Development-related causal factors could include either permitted or non-permitted activities (exempt or illegal); failure to fully implement permit conditions or mitigation measures; or inadequate regulatory and mitigation standards. The following diagram shows how the county's monitoring process will work to capture any ecological declines due to exempt activities.



When development activity is proposed, the county makes the determination whether or not the property is within shoreline jurisdiction and if so, whether or not a shoreline permit is needed. This determination can already be tracked for: 1) properties where a shoreline permit has been issued; and 2) properties in shoreline jurisdiction that did *not* receive a shoreline permit.

Comment 7: Forestry is not exempt from SMA like agriculture.

Response 7: The Shoreline Management Act regulates only conversions and timber removal along shorelines of statewide significance in excess of 30% volume in a ten year period per RCW 90.58.150. For conversions, the proposed SMP will apply the policies and management criteria for the shoreline environment; the policies and standards for the new use and for vegetation management; and the CAO standards for no net loss of ecological functions.

Comment 8: The regulatory offsets should be addressed by ecological functions and sub-functions, water type (lake, river, marine) and by shoreline environment designations. More detail is needed for in-water structures (breakwaters, jetties and groins) and for specific critical area regulations.

Response 8: Table 15, included in the cumulative impact analysis released for public review on June 21, 2010, addresses this comment.

Comment 9: A number of CAO provisions were identified as potential SMP variable standards that require a cumulative impact analysis. Ecology is concerned that these variable standards will not meet the “no net loss” standard. Additional analysis is needed to show how these provisions will allow the county to meet the “no net loss” requirement. Ecology is still assessing section 4.4.2 (variable standards for critical area protection) analysis for meeting no net loss of ecological functions, and whether or not the above CAO elements should remain in the SMP integrated CAO, be listed as exceptions in SCC 30.67.060 (3,) or treated as a variable standard requiring a shoreline variance under SCC 30.67.060 (4). *(See “follow-up email”, dated July 1, 2010, included in this FSEIS, for Ecology’s recommendations.)*

Response 9: Section 4.4.2, included in the cumulative impact analysis released for public review on June 21, 2010, addresses this comment.

Comment 10: Ecology recommends that the CAO adaptive management plan be modified to assess the effectiveness of SMP regulations. This would allow the County to fully meet WAC 173-26-191 (2) (a) (iii) (D) no net loss tracking requirements.

Response 10: The SMP regulations were included in the additional narrative discussion on page 105 of the cumulative impact analysis.

Comment 11: The final analysis needs to be more comprehensive, touching on all the key aspects of the cumulative impacts analysis. Sub-discussions should also be provided for the three shoreline types (lake, river & marine) and explain why the proposed program activities meet no net loss in these shoreline environments.

Response 11: The conclusion was revised to address this comment. See page 105 of the cumulative impact analysis issued for public review on June 21, 2010.

Comment 12: Ecology reviewed the revised cumulative impacts analysis to see if it fulfills shoreline use analysis requirements as described in WAC 173-26-201 (30) (d) (ii). The CIA does not address potential use conflicts.

Response 12: Additional analysis addressing this comment was included in the cumulative impact analysis issued for public review on June 21, 2010 (see pages 83-85).

From: Pater, David (ECY) [mailto:DAPA461@ECY.WA.GOV]
Sent: Thursday, July 01, 2010 5:03 PM
To: Strandberg, Terri
Cc: Stockdale, Erik (ECY)
Subject: CAO/SMP conference call & CIA follow

Terri,

Enclosed are my follow-up comments to your June 16th, CIA follow-up comments. My comments are in green font.

<<SnoCoCIAECYcomJun10_tcs ECYDPcom.docx>>

Here's what Ecology proposes for the below CAO exceptions:

CH. 30.62A Fish and Wildlife Habitat Conservation Areas

30.62A.320 (1) (e) (i) (ii) & (ii) (Measures for reducing buffer width and area that may be used without a critical areas study or site plan)

30.62A.320 (1) (f) (i), (ii) & (iii) (Enhancement reduction), 30.62A.320 (1) (g) (Buffer reduction limits)

- Any project that proposes going beyond a 25% buffer reduction through the appropriate CAO mechanisms would require a shoreline variance. Variance requirement language could be inserted into SCC 30.67.060 (4) .

This option would allow *CH. 30.62A 320(1) (e) (i) (ii) & (ii) & 30.62A.320 (1) (f) (i), (ii)* to remain intact in the SMP CAO. While *30.62A.320 (1) (f) (iii)* would need to be listed as a CAO exception in SCC 30.67.060 (2)

-For *30.62A.520 (Single Family residential development exceptions) (1), (3) & (7)* Ecology recommends that section #1 be listed as exception and be replaced in the SMP with following standard: Any new single family residential development structure and ordinary residential improvements shall not disturb more than 2500 square feet of buffer. This would apply only to lots existing prior to October 1, 2007. Sections 3 & 7 would also need to be listed as CAO exceptions in SCC 30.67.060 (2)

-Ecology recommends that when the below CAO Geo-hazard standard is utilized, a shoreline variance be required.

Variance requirement language could be inserted into SCC 30.67.060 (4) .

CH. 30.62B Geological Hazards Areas: 30.62B.340 (2) b (*Deviations from Setbacks*)

I hope I captured most this afternoon's discussion. If I missed anything let me know.

Thanks

David

David Pater
Shorelands and Environmental Assistance
Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-4253

Comment 1: Ecology recommends lower thresholds for some of the variable buffer and setback standards in the critical area regulations. Exceeding these reduced thresholds would require a shoreline variance.

Response 1: In section 4.4.2 of the cumulative impact analysis, the county describes how the adopted multifaceted approach to ecological protection, including the existing critical area regulations, will meet the “no net loss” standard. This approach has already been supported by the Growth Management Hearings Board as meeting the requirements under the Growth Management Act (GMA)¹. The existing standards in the critical area regulations were found to be within the range of recommendations from the best available science. Since these critical area standards already meet the statutory and scientific requirements under the GMA, there is no need to revise them. The state Supreme Court acknowledges that, “t(T)he SMA , with its goal of balancing use and protection, is less burdensome” than the requirements under the GMA².

¹ Pilchuck Audubon and Futurewise v. Snohomish County, CPSGMHB, Case 07-3-0033, Final Decision and Order, April 1, 2008, page 9-10.

² Futurewise, et. al. v. City of Anacortes, Supreme Court of the State of Washington, No. 80396-0, En Blanc, filed July 31, 2008, page 3.

Master Builders Association Comment Letter – Dated July 21, 2010



Master Builders Association
of King and Snohomish Counties
335 116th Ave. SE
Bellevue, Washington 98004
t: (425) 451-7920 / (800) 522-2209
f: (425) 646-5985
www.MasterBuildersInfo.com

July 21, 2010

Terri Strandberg
Snohomish County Planning and Development Services
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201

Re: Shoreline Management Program Update Comment Letter

Dear Ms. Strandberg,

On behalf of the Master Builders Association of King and Snohomish Counties (MBA) I am submitting these comments as part of the SEPA public comment regarding the Shoreline Management Program Update.

Our commentary focuses on one specific area – buffer reductions.

MBA supports Snohomish County's position regarding allowed buffer reductions in its Shoreline Management Program, and object to the state Department of Ecology's (DOE) stated desire to alter those standards.

We point to the fact that DOE did not challenge Snohomish County's Critical Areas Regulations (CAR) as previously adopted. DOE had every opportunity to do so and was fully engaged in the process that led to their adoption.

Going one step further, Pilchuck Audubon Society and Futurewise did challenge CAR in Central Puget Sound Growth Management Hearings Board case number 07-3-0033 (Pilchuck VII). Snohomish County prevailed on all issues, including buffer reductions, and the case was closed. Snohomish County's CAR is valid and has been upheld by the Hearings Board.

MBA further adds that any argument or comparison regarding any other jurisdictions allowed buffer reductions is invalid because each jurisdiction has built its CAR around differing facts and science in the record. The Hearings Board found that the facts in the record supported Snohomish County's buffer reductions.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Pattison'.

Mike Pattison
North Snohomish County Manager

Comment 1: The Master Builders Association (MBA) supports the county’s current critical area regulations with respect to allowed reductions in buffer widths. These buffer reductions are supported by the county’s analysis of the best available science and have been upheld by the Growth Management Hearings Board. The MBA objects to the proposal by the state Department of Ecology (Ecology) to alter the buffer reduction standards.

Response 1: Proposed alterations to the buffer reduction standards recommended by the state Department of Ecology were not analyzed as part of the alternatives in the SEIS. The alterations to the buffer reduction provisions proposed by Ecology (see “follow-up email”, dated July 1, 2010, included in this FSEIS) would reduce the amount of buffer reduction allowed to a maximum of 25 percent of the standard buffer width. Revisions to the buffer reduction standards proposed by Ecology can be reviewed in proposed Amendment 6 as part of the County Council record.

The buffer reductions that are currently allowed under the County’s critical area regulations are reviewed as incorporated into Alternatives 2 and 3. Buffer reductions are specifically addressed in the SEIS, Appendix C – Cumulative Impact Analysis, beginning on page 98. The county has adopted a multifaceted approach to achieve the “no net loss of shoreline ecological functions” standard required under the Shoreline Management Act (SMA). These buffer reduction standards, along with the other components of the county’s multifaceted approach, have already been upheld by the Growth Management Hearings Board as meeting a comparable standard under the Growth Management Act (GMA) of “no net loss of critical area functions and values.” The County compares the ecological functions under the SMA and the GMA³ and finds that since the functions are equivalent, the “no net loss” standards are also equivalent and therefore meeting the requirements under GMA also satisfies the requirements under the SMA⁴.

While the science shows that larger buffers would provide improved protection for ecological functions, the gains in improvement become smaller as the buffer gets wider⁵.

³ Snohomish County, proposed Ordinance No. 10-058, Table W-1, pg. 18-19.

⁴ Snohomish County, proposed Ordinance No. 10-058, pg. 28.

⁵ Snohomish County, *Revised Draft Summary of Best Available Science for Critical Areas*, March, 2006, pg. 81.

Citizens for Sustainable Development Comment Letter – transmitted via email on July 23, 2010, original letter dated March 12, 2009 (March 12, 2010, in the footer)

From: Env. Eng. Assoc. [mailto:environmentalengineeringassociat@yahoo.com]
Sent: Friday, July 23, 2010 3:33 PM
To: Strandberg, Terri
Subject: SMP update SEIS

Dear Ms. Strandberg,

Our fundamental concerns regarding the pending SMP update, which we previously submitted to the Planning Commission (attached), still remain.

We contend that a full EIS must be done to examine and address the adverse environmental consequences that will inevitably result from the County's insistence on modifying the standard SMP language, standards, and policies recommended by the State.

Thank you.

Citizens for Sustainable Development

1

Citizens for Sustainable Development Comment Letter – transmitted via email on July 23, 2010, original letter dated March 12, 2009 (March 12, 2010, in the footer)

Citizens for Sustainable Development
19916 Old Owen Road, Box 220
Monroe, WA 98272

March 12, 2009

Snohomish County Planning Commission
3000 Rockefeller Ave., MS 604
Everett, WA
98201

Via email to: Sally.Evans@snoco.org, Terri.Strandberg@snoco.org, "David Pater"
<dapa461@ecy.wa.gov>

RE: Preliminary comments regarding Snohomish County's draft Shoreline Management Master Program Update

Members of the Planning Commission:

We are writing to describe a variety of problems with the current draft of the pending Snohomish County Shoreline Management Master Program update ("Draft"). The Draft is fatally flawed for both substantive and procedural reasons and must be completely re-written. Among its many defects are the following: first, it fails to take into account innumerable pieces of crucial scientific evidence, including, *inter alia*, the Biological Opinion (BiOp), which was issued by the National Marine Fisheries Service on September 22, 2008.¹ Second, the manner in which it was drafted has deprived the public of a meaningful opportunity to participate in its development. All of this violates RCW Ch. 90.58, the Shoreline Management Act, ("SMA"), WAC Ch. 173-

¹ In 2004, the Federal Emergency Management Agency (FEMA) was sued by the National Wildlife Federation, which alleged that FEMA had been far too liberal in issuing flood insurance policies on floodplains, thereby contributing to the destruction of salmon habitat and the illegal take of salmonids in violation of the Endangered Species Act (ESA). As a result of the lawsuit, the NMFS issued a Biological Opinion (BiOp) upholding the claims against FEMA and requiring FEMA and the affected communities – including Snohomish County – to severely restrict all further floodplain development. See Endangered Species Act – Section 7 Consultation, Final Biological Opinion And Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation Implementation of the National Flood Insurance Program in the State of Washington. Published September 22, 2008 by the National Marine Fisheries Service, NW Region, Seattle, WA. Tracking No. 006/00472 at https://pcts.nmfs.noaa.gov/pls/pcts-pub/sxn7.biop_results_detail?reg_inclause_in=%28%27NWR%27%29&idin=29082

The BiOp is the most recent and thorough scientific data regarding the tenuous existence of the ESA-listed salmonids inhabiting Snohomish County's rivers, and as such it must be addressed by the Draft. But it is not even mentioned. Instead, the County cites a NMFS study from 1996 which "identified environmental factors important for salmonid survival, and have developed indicators and thresholds to evaluate the conditions at the local level." Draft Shoreline Inventory, p. I-5. The 2008 NMFS BiOp not only "identifies factors" that are crucial for "salmonid survival," it prescribes a course of action that must be followed to ensure that outcome. Yet the county is seeking to reject that prescription by ignoring the BiOp entirely.

Citizens for Sustainable Development
Preliminary Comments to Planning Commission re: draft of Shoreline Management Master Program update
March 12, 2010
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26, the Shoreline Master Program Guidelines, (“the Guidelines”), and the Shoreline Master Program Handbook, Ch. 4-7 (“the Handbook”).²

The Draft must revised to incorporate and address the latest scientific data. During that process, the public must be given a substantive opportunity to participate. But the county cannot be permitted to drag its heels in accomplishing this. From 2006 to 2010, the county sat on its hands and took little discernable action with respect to the Draft other than preventing the public from participating in its development.³ Even the Advisory Committee, which was convened by the county in 2004, was shut out of the process in 2006 and blocked from further participation. Disturbingly, it appears that the county may try to use the Advisory Committee’s ancient contributions as justification for pushing through the Draft with stale data and as little up-to-date public participation as possible.

**THE PUBLIC HAS BEEN DEPRIVED OF A MEANINGFUL
OPPORTUNITY TO PARTICIPATE IN THE DEVELOPMENT OF THE DRAFT**

The SMA requires the county to allow public participation in the development of the Draft. Indeed, RCW 90.58.130 obligates local governments to “not only invite but actively encourage” public participation in “both the development and implementation” of shoreline master programs. The Guidelines reiterate this legislative mandate, requiring that “preparation and amending of master programs shall involve active public participation”. WAC 173-26-191(1)(a). The Handbook explains that “public participation is essential when developing a Shoreline Master Program (SMP)” and describes “obtaining and sustaining citizen participation through a variety of outreach efforts” as one of the three major elements of a public participation program. Handbook Ch. 6, p.1.

Snohomish County effectively evaded compliance with these requirements by soliciting public participation over 6 years ago and terminating public participation over 4 years ago. Given the enormous changes during the last four years (which include a vast increase in the county’s population, the emergence of global warming as a serious threat, the ever-more-rapid development of the county’s floodplains, the increasing frequency and severity of local floods, the expansion of massive factory farms on local floodplains, the ongoing demise of ESA-listed salmons, etc.), it is nonsensical for the county to pretend that four-year-old public comments are adequate. Moreover, the members of the public who participated in the process more than four years ago obviously could not have cited any of the innumerable scientific studies that were done

² The Draft is unacceptable for a number of other reasons of well, though only a few of them will be addressed in these preliminary comments.

³ Although we object to the manner in which the Draft was developed and reject many of its assertions, provisions, and conclusions, we’d like to acknowledge the competent job done by Ms. Strindberg. It seems likely that the county’s pervasive bias in favor of developers, land speculators, and agribusiness interests is largely responsible for the problems which beset the Draft.

since 2006. Such studies include the BiOp, the new FEMA DFIRMS which will expand the county's floodplains, the county's Green Ribbon Climate Task Force report, *etc.*⁴

The complete Draft is still not available to the public, thus continuing the county's four-year-long pattern of blocking public participation in the development of the Draft. At least two very important portions are still being withheld. These include Appendix C (the Cumulative Impact Analysis), and the Restoration Element.⁵ According to the county's website, the former consists of 87 pages of analysis and 118 pages of data tables, while the latter consists of 81 pages and 12 maps. Obviously, the public cannot review these documents while they remain concealed by the county.

We are unable to provide complete or in-depth comments at this time because we have been greatly handicapped by the county's failure to provide timely access to the Draft. The county kept this gargantuan document concealed until January, and it is impossible to substantively review a highly complex 1200+ page document filled with arcane scientific material in such a short period of time. This is amply proven by the fact that it seems to have taken the county over four years to write it.

THE DRAFT IGNORES VITAL SCIENTIFIC EVIDENCE

The SMA requires the county to "utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data" in developing the Draft. RCW 90.58.100(1)(e). It must also "consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact." RCW 90.58.100(1)(b). And it must "consider all plans, studies, surveys, inventories... made or **being made** by federal, state, regional, or local agencies..." RCW 90.58.100(1)(c) (emphasis added).

Thus the county is required to utilize not only the BiOp, but FEMA's new floodplain maps (the DFIRMS, which are scheduled to be published next month), and many, many other reports and studies, including the "Snohomish County Green Ribbon Climate Task Force Recommendations," January 12, 2009; "Growing Washington's Economy in a Carbon-Constrained World: A Comprehensive Plan to Address the Challenges and Opportunities of Climate Change" (Dept. of Ecology & Department of Community, Trade, and Economic Development, December 2008, ECY Publication no. 08-01-025); "Responding to the Climate Change Challenge" (ECY and CTED, February 2009); "An Overview of Potential Economic Costs to Washington of a Business-As-Usual Approach to Climate Change A Report" (Program on Climate Economics, Climate Leadership Initiative, Institute for a Sustainable Environment, University of Oregon, February 17, 2009); "The Washington Climate Change Impacts

⁴ We will not include copies of any of the referenced authorities because most of them are already in possession of the County and those that are not are easily downloadable from the internet via a quick Google search.

⁵ As of 1:30 pm March 12, 2010, neither of these documents were available for download from the county's webpage: http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/Code_Development/Shorelines/SMP_Documents.htm
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Assessment Evaluating Washington's Future in a Changing Climate Full Report" (University of Washington, February 2009).

All of these studies contain information directly relevant to shoreline management, including material regarding the expected increased frequency and severity of floods, the likelihood of increased rainfall (which may lead to increased erosion in the county's many highly-erodible floodplains), *etc.* However, it does not appear that any of these authorities were considered, much less addressed.

3

The Draft also fails to address a number of important studies the county has conducted regarding groundwater and water pollution. For example, the county retained Golder & Associates in 1996 to conduct a detailed study of the county's geohydrology. The resulting "Geohydrology Memorandum" contains a wealth of scientific findings, many of which are particularly relevant to the Master Program. For example, the Water Table Vulnerability Map (Figure 5-1), shows that many of the county's floodplains are underlain by aquifers ranked "High" on the vulnerability scale. Similarly, Figures 4-3 and 4-4 establish that the soil under some floodplains is definitively "unsuitable" for both wastewater infiltration and stormwater infiltration. And Table 5-3 verifies that in comparison to other agricultural areas, some floodplain aquifers are "highly vulnerable."

But the Draft ignores this data and fails to distinguish between any of the floodplain aquifers despite their differing levels of vulnerability. In fact, the Draft allows the same inherently-harmful uses over highly vulnerable critical aquifers located within Shorelines of SS (*see* the following section), as it does over much less vulnerable aquifers within regular shorelines. Many of those uses are utterly incompatible with vulnerable aquifers. The failure of the Draft to appropriately limit the range of uses on critical aquifers is unacceptable, particularly with respect to vulnerable aquifers located within Shorelines of SS.

The findings of the Geohydrology Memo were recently corroborated by the county's publication of its "Aquifer Recharge/Wellhead Protection" map. That map, dated Oct. 1, 2007, confirms that many of the county's floodplains lie over "highly sensitive" aquifers that rise to the surface of the ground. Again, the Draft places virtually all of these floodplains into the so-called "Resource" environment without any regard to their differing levels of vulnerability to contamination. Many "highly vulnerable" aquifers lie within Shorelines of Statewide Significance and are entitled to heightened protection on that basis as well.

THE DRAFT FAILS TO INCLUDE THE REQUIRED PROTECTIONS FOR SHORELINES OF STATEWIDE SIGNIFICANCE

4

The SMA defines certain shorelines as Shorelines of Statewide Significance (Shorelines of SS) (*see* RCW 90.58.030(2)(e), WAC 173-26-251(1), WAC 173-18-040(3)(a), and WAC 173-18-350(33)), and imposes stringent limitations on the manner in which they can be used. *See* RCW 90.58.020 and WAC 173-26-181.

The legislature explains that Shorelines of SS “are major resources from which all people in the state derive benefit” and accordingly they must be used in a manner that: benefits statewide interests rather than local interests, preserves the natural character of the shoreline, results in long-term over short-term benefit, protects the resources and ecology of the shoreline, and increases recreational opportunities for the public. RCW 90.58.020.

That the legislature intends these shorelines to be accorded a much higher degree of protection than other shorelines is indisputable:

The legislature declares that **the interest of all of the people shall be paramount in the management of shorelines of statewide significance.** The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, **shall** give preference to uses in the following order of preference which:

- (1) Recognize and **protect the statewide interest over local interest;**
- (2) **Preserve the natural character of the shoreline;**
- (3) **Result in long term over short term benefit;**
- (4) **Protect the resources and ecology of the shoreline;**
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) **Increase recreational opportunities for the public in the shoreline;**
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this **policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible** consistent with the overall best interest of the state and the people generally. To this end **uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.** Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. ***

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

RCW 90.58.020 (emphasis added).

The county's current SMP includes a decent section on Shorelines of SS. But the Draft merely lists the Shorelines of SS and includes none of the statutory language regarding their enhanced protections and limited uses. *See* Draft, sec. 1.2.2 (p.6). The Draft does not appear to require

any different treatment for Shorelines of SS than it does for other shorelines. The Draft must include the statutory language regarding Shorelines of SS.

AS CONFIRMED BY THE NMFS BIOLOGICAL OPINION, THE DRAFT FAILS TO ENSURE NO NET LOSS AND FAILS TO PROVIDE ADEQUATE PROTECTION FOR ESA-LISTED SALMONIDS, WHICH IS PARTICULARLY UNACCEPTABLE IN SHORELINES OF STATEWIDE SIGNIFICANCE

The Guidelines explain that protection of the shoreline environment is an essential policy goal of the SMA. WAC 173-26-186(8). Local master programs “shall include policies and regulations designed to achieve no net loss” of ecological functions. WAC 173-26-186(b). *See also* WAC 173-26-201(2)(c) (Master Programs “shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.”) And RCW 90.58.100(2)(f) specifies that, when appropriate (such as when ESA-listed salmon are being pushed into extinction), the Master Program “shall include” “a conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection”.

In addition, as noted above, the SMA requires that uses on Shorelines of SS must “protect the resources and ecology of the shoreline” and “result in long term over short term benefit.” RCW 90.58.020.

Thus it is clear that the Master Program must protect the natural environment, including fish.

The BiOp establishes beyond doubt that salmon listed under the Endangered Species Act are being pushed into extinction by floodplain development. Under the SMA, the Master Program must prevent that from occurring. The BiOp prescribes the necessary course of action, requiring the county to do the following:

- 1) Allow no development in the floodway, the CMZ plus 50 feet, and the riparian buffer zone; **OR** 2. demonstrate to FEMA that any proposed development in the FEMA designated floodway, the CMZ plus 50 feet, and the riparian buffer zone does not adversely affect water quality, water quantity, flood volumes, flood velocities, spawning substrate, and/or floodplain refugia for listed salmonids, **AND** a) Prohibit development in the 100-year floodplain, **OR** b) avoid, rectify, or compensate for any loss of floodplain storage and mitigate any adverse effects such that equivalent or better salmon habitat is provided. BiOp, p.154.

The BiOp confirms that this prescription must be followed in order to ensure that there is no net loss of ecological functions. Therefore these same restrictions must be written into the Master Program. Indeed, the need for this is clearly demonstrated by the efforts of FEMA and the affected communities to water down these requirements. For example, the county has continued to allow many floodplain developments in the aftermath of the BiOp, and has evaded the BiOp’s intent by certifying to FEMA, on the basis of no objective evidence whatsoever, that many floodplain development projects will have “no impact” on ecological functions. Records

regarding these ongoing county practices will be submitted at a later date, though the Commission should be able to easily confirm this for itself.

It is untenable to argue that because the Model Ordinance now being drafted by FEMA and the affected communities has not been finalized or adopted, the Master Program need not address the findings of the BiOp. As note above, the Master Program is required to address “all plans, studies, surveys, inventories... made **or being made** by federal, state, regional, or local agencies...” RCW 90.58.100(1)(c) (emphasis added). The BiOp itself has already been completed; its findings are final, complete, and indisputable. It is only the regulations that FEMA and the affected communities plan to impose in response to it that are still being hammered out. Those regulations are irrelevant to the Master Program. The crucial data that must be addressed by the Master Program consists of the BiOp findings and conclusions.

While we will probably refrain from demanding that the Master Program prohibit all development in all floodplain areas, we do insist, consistent with the BiOp, that virtually all floodplain development in Shorelines of SS be prohibited.

THE DRAFT DOES NOT INCLUDE ADEQUATE FLOODPLAIN PROTECTIONS

Contrary to the wishes of land speculators, minimizing SMA jurisdiction by pretending that the county’s floodplains are not shorelines, or that the floodway is smaller than that established by the new DFIRMS would not further their objectives.

The consequences of the county’s failure to properly regulate development in its full floodplains under the Master Program have been disastrous. For example, Snohomish County is “the #1 repetitive [flood] loss county in all of FEMA Region X.” See Snohomish County Natural Hazards Mitigation Plan Steering Committee meeting, September 17, 2009 at p.3.⁶

The Washington State Enhanced Natural Hazards Mitigation Plan (2007), confirms that Snohomish County has an exceptionally high level of flood damage and repetitive flood loss.⁷

Moreover, the county acknowledges that its current codes do not adequately address flood hazards, explaining that “floods in the 1990s showed the inadequacies of the current code and its failure to fully address the true flood hazards.” “Flood Hazard Management Issues in Snohomish County” (FHZ Mgmt. Statement), August 27, 2001, at p.6.⁸

The SMA directly addresses this issue, stating that, where appropriate (as in “the #1 repetitive flood loss county” in all of Washington, Oregon, Alaska, and Idaho), the Master Program “shall”

⁶http://www.co.snohomish.wa.us/documents/Departments/Public_Works/SurfaceWaterManagement/Flooding/HazMinutes091709.pdf

⁷ See Ch. 5.5 (“Flood”): http://www.emd.wa.gov/plans/washington_state_hazard_mitigation_plan.shtml

⁸http://www.co.snohomish.wa.us/documents/Departments/Public_Works/surfacewatermanagement/flooding/200108FloodHazMgmtIssues.pdf

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address “the statewide interest in the prevention and minimization of flood damages.” RCW 90.58.100(2)(h).

Similarly, the Guidelines explain that:

Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. WAC 173-26-221(3)(c)(i).

This provision “shall” be applied to critical areas, which include “frequently flooded areas.” WAC 173-26-221(2)(a)(i)(d).

Even if the jurisdiction of the Master Program could be limited to something less than the entire floodplain, the excised floodplain land would still have to be regulated in a manner consistent with that portion of the floodplain remaining under SMA jurisdiction. RCW 90.58.340 would require the county to revise its administrative and management policies, regulations, plans, and ordinances to “achieve a use policy on said land consistent with the policy of [the Shoreline Management Act].”

The same would result is dictated by General Policy Plan NE Policy 3.D.2, which requires the County to “allow only those developments and land uses in floodplains that are compatible with floodplain processes.”

Finally, it would be impossible to reduce the extent of the Master Program’s jurisdiction on Shorelines of SS, as explained in the following section.

**THE COUNTY’S COMPREHENSIVE PLAN (GPP) CONFLICTS WITH
THE SMA, AND THE CONFLICT CANNOT BE RESOLVED BY
WATERING DOWN THE MASTER PROGRAM**

The Growth Management Act (GMA) explains that the goals of the SMA are made the goals of the GMA. “For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter...” RCW 36.70A.480(1).⁹

⁹ To the extent that the recitals in the Draft Ordinance insinuate that the Master Program must be altered to conform to the GMA, the GPP, or the Comprehensive plan, those recitals are incorrect, misleading, and unacceptable.

For example, the Draft Ordinance fails to make clear that the provisions of the SMA are adopted by the GMA as opposed to being replaced by the GMA: “RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the local comprehensive plan required by the Growth Management Act (GMA) (chapter 36.70A RCW).” Draft Ordinance, p.1

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The Guidelines reiterate this with respect to Shorelines of SS, requiring local governments to ensure that “other local comprehensive plan provisions are consistent with and support as a high priority the policies for” Shorelines of SS. WAC 173-26-251(3)(e).

Thus any provisions of the county’s General Policy Plan (GPP) which are inconsistent with the SMA in general or RCW 90.58.020 in particular cannot be used to justify the adoption of any Master Program provisions that conflict with the SMA.¹⁰ To the contrary, the GPP must be made consistent with RCW 90.58.020 (not vice versa) – and this is particularly true with respect to Shorelines of SS.

Many provisions of the GPP are strongly supportive of a stringent Master Program. Indeed, the Draft is so watered down that it is actually less protective of shoreline ecology than the GPP.¹¹

GPP NE 1.C.3 requires the county to “protect and enhance the ecological functions of shorelines through the Snohomish County Shoreline Management Program.”

GPP Objective NE 1.C requires the County to “Protect and enhance natural watershed processes, wetlands, fish and wildlife habitat conservation areas, shorelines, and water resources with the long-term objective of protecting ecological function and values.”

GPP Goal NE 3 requires the county to “comply with the requirements of state, federal and local laws for protecting and managing critical areas, shorelines, and water.”

GPP Objective NE 3.F requires the county to “Protect ecological functions of shoreline natural resources through the Snohomish County Shoreline Management Program.

GPP NE Policy 3.F.1 requires the county regulate shorelines so as to “promote water dependent uses and development which cannot be located anywhere else.”

GPP NE Policy 3.D.2 requires the County to “allow only those developments and land uses in floodplains that are compatible with floodplain processes.”

The Draft Ordinance also asserts that: “[T]he goals and policies adopted in the SMP become part of the county’s GMA comprehensive plan (GMACP) and, as part of the GMACP, the provisions in the SMP must be consistent with the comprehensive plan [RCW 36.70A.070].”

To the extent that the county is implying that the comprehensive plan trumps the Master Program and the SMA, its statements are incorrect and must be clarified.

¹⁰ The county has undoubtedly cited various provisions in the Agriculture section of the GPP as justifying alterations to the Master Program, but as explained above, those provisions must be revised to conform to the SMA, not vice-versa.

¹¹ If the Draft is adopted in its present form, it seems reasonable to suspect that the county would move to water down the GPP to the level of the Draft.

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The latter GPP provision is yet another reason why the county's failure to utilize up-to-date scientific studies is unacceptable.

THE MASTER PROGRAM MUST UTILIZE THE NEW DFIRMS

The county admits that its existing flood data is inaccurate and unreliable, leading to unwise decision-making which has jeopardized public safety.

Flood zones along Snohomish County's rivers were mapped decades ago. Since then, rapid population growth and urbanization have drastically changed land-use patterns, altering the ability of the land to absorb high amounts of precipitation and to extend the duration of runoff into the rivers and floodplains. As land is converted from fields, wetlands and woodlands to roads, home sites and parking lots, runoff increases from 2 to 6 times over what would occur on natural terrain. **Thus flood-zone maps do not accurately depict the present state of the hazard, nor have we adequately evaluated increased risk in other areas of the county not thought to be flood-prone.** For example, during periods of urban flooding such as were experienced in December 1996 – January 1997, **streets become swift-moving rivers, basements become water traps, and unstable slopes lose their ability to bear their artificial burdens of concrete and steel.** The result is a new kind of vulnerability - one that will continue to grow in severity as we reduce our natural water absorption capacity. **In Snohomish County, floods are a major threat to the environment and property, and to a lesser extent, the safety of humans and livestock living on the floodplains. Flood damages in the county exceed losses due to all other natural hazards. Construction in floodplain areas is under tight regulation in the county.**

Snohomish County Hazard Identification and Vulnerability Analysis (HIVA),
SnoCo Department of Emergency Management, January 1, 2002. p. 36-37.

The county also acknowledges that the Flood Insurance Rate Maps (FIRMS) drawn up by FEMA for the NFIP dramatically under-predict flood levels:

Snohomish County has FIRMS that date back to 1984, when the County entered into the National Flood Insurance Program (NFIP). *** Experience and analysis from the large floods of the 1990s and those more recent have shown that the county's FIRMS are inaccurate in many areas, and generally under-predict flood levels. The reasons for the inaccuracies include:

- Increasing peak flows (due to development and climate change)
- Rising sea levels (affecting tidal flooding)
- Changing river channels
- Inadequate topographic data
- Simplistic mapping technology (we now have more powerful tools to map floods)

There are several potential consequences of having inaccurate flood maps as a reference tools, including:

- The County may be permitting new construction to occur at levels and in locations prone to frequent, repetitive flood damages.¹²
- New construction may have the potential to increase flood levels more than the 1 foot allowed by federal standards, increasing flood damages to adjacent properties.
- FEMA, through the NFIP, may be paying out flood insurance claims at rates higher than expected.¹³

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Fortunately, FEMA has nearly completed new, updated maps that are far more accurate. These new “DFIRMS” should be available in April. The Master Program must utilize the new DFIRMS in mapping the floodplains and environment designations and assessing their proper categorization.¹⁴

PUBLIC HEARINGS MUST BE REQUIRED FOR SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS

RCW 90.58.130 requires local governments to “not only invite actively encourage” public participation in “both the development and the implementation” of shoreline regulations.

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The county’s current SMP (as well as the Draft, which contains the same provisions described here) impedes public participation in the “implementation” of the SMP by processing virtually all Shoreline Substantial Development (SSD) permits administratively. The county has a well-established policy and practice of refusing to hold public hearings for SSD applications despite the fact that SCC 30.44.240(2)(b)(ii) specifies the factors to be considered in determining the need for a public hearing.

Those factors include “the presence of significant economic, health, safety, environmental and land use issues, and/or conflicts with the county’s adopted plans, policies or regulations.” Although hundreds of SSD applications have presented all of these factors, we have been told by a PDS staffer with many decades of experience that only a single SSD application has ever been routed to a public hearing as opposed to being handled administratively. We will submit additional information regarding this matter soon.

However, even if the County adhered to its own regulations and sent SSD applications to a public hearing when the above factors were present (it does not), such a practice would still violate the mandate of RCW 90.58.130, which requires that all persons “shall” be provided with a full opportunity for involvement in the “implementation” of the Master Program. The SMA requires a public hearing for each SSD application.

¹² This admission is particularly important here, because it confirms that the county has a propensity, if not a sub rosa policy, to permit more floodplain/shoreline development than objectively reasonable.

¹³ http://www1.co.snohomish.wa.us/Departments/Public_Works/Divisions/SWM/Work_Areas/River_Flooding/Planning/dfirms.htm

¹⁴ This is true even if the maps are in Draft form. As noted *supra*, the county must utilize all data that is in the process of being made by federal agencies. RCW 90.58.100(1)(c).

Ecology seems to disagree. But Ecology's opinion regarding this matter is not entitled to any deference whatsoever because the question has nothing to do with technical expertise within the special purview of the Department.

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Instead, the issue concerns the routine application of the standard rules of statutory construction. Those rules provide that all the language in a statute shall be given effect; no portion shall be rendered meaningless. *Judd. v. American Tel. and Tel. Co.*, 152 Wn.2d 195, 202, (2004). The legislature clearly distinguished between the "development" and the "implementation" of shoreline regulations, and specified that the public must be encouraged to participate in "both." To interpret the word "implementation" as meaning nothing different than "development" would render it superfluous, meaningless, and of no effect, which is antithetical to the rules of statutory construction.

In its current form, the Draft contravenes the statute by allowing the County to continue its longstanding practice of preventing interested parties from participating in the implementation of the SMMP by issuing Substantial Development Permits administratively (without a public hearing). Thus it must be revised to correct this defect.

MISCELLANEOUS PROVISIONS THAT MUST BE ADDED

1) The county has a well-documented and longstanding history of allowing SSD projects to move forward even though they have not obtained all relevant permits from other agencies (*e.g.* the Dam Safety division of the Dept. of Ecology, the Army Corps of Engineers, *etc.*). To remedy this, the SSD Permit Checklist must list every possible permit that has ever been required in the Shoreline Jurisdiction, regardless of the agency which issued it, and moreover the checklist must specify that the issuance of the SSD is conditioned on the applicant's timely application for and successful receipt of all other relevant permits, and that failure of the applicant to comply with that requirement will automatically render the SSD permit void.

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2) The county has a longstanding pattern and practice of pretending that even the most grossly incomplete SSD permit applications are adequate to vest at the time of submittal. This is untenable. The Master Program must specify that an application vests only if it is submitted in a reasonably complete form and includes all information that can reasonably be anticipated as being necessary. Toward that end the application checklist must be made far more detailed.

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3) Snohomish County citizens should not have to suffer the needless and severe difficulties of dealing with a labyrinthine Master Program whose provisions are scattered willy-nilly throughout the county's codes. The Draft should be completely reorganized into a single stand-alone chapter that can be published as a complete, stand-alone booklet. Perhaps the easiest way to do this would be to create an electronic version on CD with full hyperlinks and a hyperlinked index, glossary, and table of contents.

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CONCLUSION

These comments outline some of the many problems with the Draft. Many additional problems have been accurately described by Futurewise, and we agree with and endorse Futurewise's criticisms. For all these reasons and others as well (which we will detail via supplemental comments in the near future), the Draft must be completely re-written with the participation of interested citizens. We urge the Planning Commission to begin the process of revising the Draft in conformance with these comments and those submitted by Futurewise.

Sincerely,



Citizens for Sustainable Development

Comment 1: (from transmittal email) A full EIS should be done to evaluate the potential for adverse environmental impacts resulting from shoreline programmatic variations from the standards and policies recommended by the state.

Response 1: Alternatives 2 and 3 were drafted to be consistent with the state shoreline guidelines in chapters 173-18, 173-20, 173-22, 173-26 and 173-27 WAC. The state Department of Ecology in their letter to the County Council dated, July 21, 2010, recommends some minor amendments to the proposed regulations evaluated in Alternatives 2 and 3. With consideration of these minor amendments recommended by Ecology, Alternatives 2 and 3 are consistent with the standards and policies recommended by the state.

Comment 2: The public has been deprived of a meaningful opportunity to participate in the development of the draft.

Response 2: The county prepared and implemented a public participation plan with approval from the state Department of Ecology. All requirements for public participation and notification have been met.

Comment 3: The draft ignores vital scientific evidence, including the Biological Opinion (2008), FEMA's new floodplain maps (Digital Flood Insurance Rate Maps, or DFIRMs), climate change reports (2009), and the geohydrology memorandum (1996).

Response 3: The proposed SMP regulations in Alternatives 2 and 3 are based on best available science as the proposed SMP adopts the county's critical area regulations currently in effect for the protection of fish and wildlife habitat, wetlands, flood hazard areas, geologic hazard areas and critical aquifer recharge areas. While many of the reports cited have been recently released, they themselves are based on the same scientific research found in the county's *Revised Draft Summary of Best Available Science for Critical Areas (BAS)*, (2006).

- The Biological Opinion does not contain new scientific research or recommendations. It is based on a compilation of the recommendations from several scientific reports published prior to 2008. Many of these same reports were used to draft the BAS and provide the foundation for the critical area regulations.

- The county is not required to use the DFIRMs to determine the extent of shoreline jurisdiction in the floodplain. RCW 90.58.030 allows some flexibility in how the county determines which portion of the 100-year floodplain to include in its shoreline jurisdiction.
- The BAS includes discussion of climate change impacts on flooding and tsunami hazards but predates the studies identified in the comment letter. This is a rapidly evolving science which complicates the incorporation of the latest science into the proposed SMP.
- The geohydrology memorandum was included in the county's BAS and used to develop the critical aquifer recharge area regulations in chapter 30.62C SCC. Chapter 30.62C SCC is included as part of the proposed SMP.

Comment 4: The draft fails to include the required protection for shorelines of statewide significance.

Response 4: Provisions for shorelines of statewide significance were added to the proposed SMP by the Planning Commission in April, 2010, after this comment was originally drafted.

Comment 5: As confirmed by the NMFS Biological Opinion, the draft fails to ensure no net loss and fails to provide adequate protection for ESA-listed salmonids, which is particularly unacceptable in shoreline of statewide significance.

Response 5: The proposed SMP adopts the county's critical area regulations which meet the "no net loss" standard and address the protection of anadromous fish and ESA-listed species. The cumulative impact analysis addresses "no net loss" in section 4.4.2.

Comment 6: The draft does not include adequate floodplain protections.

Response 6: The proposed SMP adopts the flood hazard area regulations in chapter 30.65 SCC.

Comment 7: The county's comprehensive plan (GPP) conflicts with the SMA, and the conflict cannot be resolved by watering down the master program.

Response 7: Consistency of the GPP with the SMA is outside of the scope of the alternatives evaluated in the SEIS.

Comment 8: The master program must utilize the new DFIRMs.

Response 8: The SMA does not require use of the DFIRMs. The SMA does not require that the county designate the entire 100-year floodplain in its shoreline jurisdiction.

Comment 9: Public hearings must be required for shoreline substantial development permits.

Response 9: The SMA does not require a public hearing for shoreline substantial development permits. Local jurisdictions are allowed some flexibility to adapt shoreline permit procedures for consistency with local administrative processes. Public notification and comment periods are required.

Comment 10: The submittal checklist for shoreline substantial development permits must contain all other possible local, state or federal permit requirements. All other relevant permits must be obtained or the shoreline permit must be void.

Response 10: The shoreline permit submittal requirements are listed in WAC 173-27-180. The proposed SMP requires compliance with all other laws (SCC 30.44.030).

Comment 11: The shoreline permit application checklist must include all information that can reasonably be anticipated as being necessary.

Response 11: The shoreline permit submittal requirements are listed in WAC 173-27-180.

Comment 12: The draft should be reorganized into a single stand-alone chapter that can be published as a complete, stand-alone booklet.

Response 12: Comment acknowledged.